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Legal Protection for Famous Trademark in Indonesia: Case Study of the Supreme Court Decision No. 264/K/Pdt.Sus-HKI/2015

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Abstract
In the contemporary landscape of international trade, the significance of branding cannot be overstated. The protection of renowned trademarks is enshrined in Indonesia's Law No. 20 of 2016 on Trademarks and Geographical Indications. Trademark protection in Indonesia is typically conferred post-registration. However, certain circumstances permit the revocation or cancellation of such protection, as evidenced in the IKEA case. This study delves into the regulatory landscape governing well-known brands in Indonesia and evaluates the extent of legal safeguards available to them, whilst also sought to ascertain the circumstances under which PT Inter IKEA Systems BV Sweden forfeited its brand rights and to delineate the legal protections afforded to the trademark holder, IKEA. Employing a normative juridical approach, the research hinged on literary analysis as its foundational data source. Findings elucidate that the IKEA brand, previously owned by PT Inter IKEA System BV Sweden, was rescinded subsequent to the issuance of Supreme Court Decision No. 264/K/Pdt.Sus-HKI/2015. Therefore, PT Ratania Khatulistiwa has garnered legal protection stemming from their registration of the IKEA mark with the Directorate General of HKI. Importantly, under prevailing legal provisions, third parties are empowered to seek the annulment of the IKEA brand if it remains dormant for 3 years, even if PT Ratania Khatulistiwa wasn't the brand's initial registrant.

Keywords: Intellectual Property Rights (IPR); Famous Trademarks; Legal Protection

A. Introduction

In the era of globalization, where goods circulate rapidly and extensively, infringements against the rightful owners of well-known brands are prevalent. This is largely due to the ease of finding various types of products sold freely in the market, of which many are dupes from famous brands. It is of high importance that owners should register their brand in order to receive legal rights and protection under the trademark law. Trademark rights are a form of Intellectual Property protection wherein exclusive rights are granted to the registered owner to use their mark in trade

for the goods or services it's registered for. For instance, if a brand is registered for furniture, its exclusive right ensures that only the owner can use that brand for such furniture, not for other types of goods or services. Registering a trademark is essential, but such rights are only granted if the registration request is made in good faith, an honest and legitimate registration without any intent to exploit, imitate, or plagiarize another brand's reputation for one's business advantage. Branding plays a crucial role in marketing a product or service as the public frequently associates a brand with a specific product quality or reputation. A brand must have a unique selling point and distinguishing power, meaning it should differentiate one company's products or services from another's. When a registered brand grants recognition both locally and internationally, has intensive public awareness, and large sums of investments into its marketing strategies, it can be identified as a famous trademark, which typically becomes a target or the strongest competitor for several entrepreneurs or manufacturers.

In Indonesia, disputes over brand claims are common. One notable case involves a dispute between INTER IKEA SYSTEM B.V (IKEA International) and PT. Ratania Khatulistiwa. The Indonesian company, PT. Ratania Khatulistiwa, attempted to invalidate IKEA's trademark due to alleged non-use. They argued that IKEA International hadn't used the trademark for three consecutive years since its registration. Although the initial claim was rejected, PT. Ratania's subsequent appeal was granted by the Central Jakarta District Court. Despite IKEA International's cassation appeal to the Supreme Court, the decision stood. Relevant legal basis is found in Article 61 paragraph (1) subparagraph a of Law No. 15 of 2001 concerning Trademarks, which has now been replaced by Law No. 20 of 2016 concerning Trademarks and Geographical Indications [“**Trademark Law**”], in Article 74 paragraph (1). This provision states that the cancellation of a trademark registration initiated by the Directorate General can be executed if the trademark has not been used for 3 consecutive years in the trade of goods and/or services from the registration date or last usage, unless there are acceptable reasons provided by the Directorate General.

This article will emphasize the legal protection of the trademark holder of IKEA as examined in the Supreme Court Decision No. 264/K/PDT.SUS-HKI/2015 and its protection against well-intentioned trademark owners. Additionally, the authors will analyze the dispute between PT Inter IKEA System BV Sweden and PT Ratania Khatulistiwa based on Law No. 15 of 2001 concerning Trademarks and compare it with the latest Trademark Law, namely Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

Thus, based on the aforementioned background, the problem statement can be formulated as follows: 1) How are well-known brands regulated in Indonesia? 2) Analysis of Supreme Court's Decision Number 264 K/PDT.Sus-HKI/2015 on the Removal of Famous Trademarks, and 3) Forms of Legal Protection for IKEA Trademark Rights Holders Reviewed from Supreme Court Decision Number 264 K/PDT.Sus-HKI/2015.

B. Research Methods

This research paper will be structured using a normative approach, utilizing both statutory and case analysis. The use of the statutory approach aims to identify all regulations related to the protection of famous trademarks in Indonesia. Additionally, the case approach is intended to delineate the values, principles, and legal norms that have been adopted and developed within the jurisprudence of the Court, especially related to famous trademark ownership conflicts. For the purpose of data collection, the author will undertake a comprehensive review of legal literature and documents. Pertaining to the extant legal materials, they will be systematically analyzed and presented in two distinct categories: firstly, a compilation of all regulations governing the legal protection of famous trademarks under Indonesian Trademark Law; and secondly, an elucidation of the issues and legal protection arising from the application of said regulations, through analyzing the decision of the Supreme Court Number 264/K/PDT.Sus- HKI/2015 concerning IKEA famous trademark ownership.

C. Analysis and Discussion

C.1 Definition of Trademark

Trademarks typically manifest as logos or names, serving marketing purposes and aiming to attract consumers to utilize their products. Owners of the trademark often register it to prevent unauthorized use by third parties and to deter counterfeiting of products associated with the trademark. Based on the degree of this renown or recognition, trademarks are categorized into three distinct tiers:

1. Ordinary Trademarks or normal marks lack significant reputation and have a limited market reach. Such marks are typically not targeted by competitors.
2. Well-Known Marks enjoy a high reputation, as their marks attract attention and are the preferred choice for consumers in a certain sector, often having a symbolic importance
3. Famous Marks is the highest form of mark. While the distinctions between a 'famous mark' and a 'well-known mark' are subtle, a famous mark typically has worldwide marketing and holds an international reputation. Production is often limited to a specific demographic due to its pricing.

Meanwhile, the understanding of mark from a juridical perspective, as stipulated in Article 1 Number 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, defines that:

> *"Mark means any sign capable of being represented graphically in the form of drawings, logos, names, words, letters, numerals, colors arrangement, in 2 (two) and/or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by a person or legal entity in trading goods and/or services."*

The regulation for products and services as referred above aims to prevent other parties from engaging in unfair competition practices, such as improperly leveraging a renowned brand for personal gain through imitation or counterfeiting. With a trademark, it secures a business' product identity, serving as a guarantee of the business's reputation when traded. Not only is it to prevent third party interference, a trademark serves as both a marketing and advertising device, providing specific

information to consumers about the goods and/or services offered by a business entity.

In trademark law, trademarks are categorized into two types, as stipulated in Article 2 paragraph (2) of the Trademark Law:

a. Trademark or *Merek Dagang* is used on a product sold in the market by business entities. Typically, such trademarks are already renowned.
b. Service Mark or *Merek Jasa* refers to a mark associated with services provided to the public, distinct from goods or products. A service mark functions as a distinguishing feature for the various services offered within the community.

C.2. Famous Trademark

The definition of a famous trademark has not been explicitly mentioned and firmly established to date, creating an ongoing debate concerning the definition and criteria of a famous trademark. If we look into the historical developments and amendments of trademark law in Indonesia up to the enactment of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the definition of a 'famous trademark' remains rather ambiguous and largely abstract.

The first law governing trademark is regulated under Law Number 21 of 1961 concerning Companies and Business Trademarks, which provides no definitive definition of a 'famous trademark'. Only the declaration by Indonesian minister Number M.03-HC.02.01 of 1991 regarding the rejection of registration applications for famous trademarks provides some insight into what constitutes a 'famous trademark'. Article 1 of the decision states that:

> *"Famous trademark,' as referred to in this decision, pertains to a trademark generally recognized and used in trade by an individual or entity, both within Indonesia and internationally."*

Soon later, Law Number 21 of 1961 was amended to Law Number 19 of 1992, which similarly does not accommodate the definition of a famous trademark but focuses solely on registration systems and associated penalties. It was only until the second amendment, Law Number 15 of 2001 concerning Trademark, that the definition of

famous trademark came into light. Article 6(1) of the law set forth the criterias for a famous trademark include:

> "*Rejection of applications if the mark: being the same principally or totally as a mark of other parties, which has been registered first, in b. the case of goods and/or services of the same kind; c. being the same principally or totally as a mark already popularly belonging to other parties, in the case of goods and/or services of the same kind; d. being the same principally or totally as a geographical indication already known.*"

The criteria for famous trademarks in Indonesia remained consistent after the next amendment to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which is the latest version. The criteria listed in the Explanation of Article 6(1) of Law Number 15 of 2001 were moved to Article 21 of Law Number 20 of 2016. In summary, the criteria to classify a trademark as famous include:

a. Public knowledge within the relevant business sector;
b. The trademark's reputation due to extensive promotions;
c. Investments made by its owner in various countries, including registration evidence; and
d. Findings from an independent body's survey, though appointed by the Commercial Court, to corroborate the evidence.

This classification is similar to the ones elucidated by the World Intellectual Property Organization (WIPO), which establishes criteria regarding famous marks as agreed upon in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks. These factors can be utilized to determine if a mark falls under the category of 'famous', namely:

a. level of knowledge or recognition of the mark within the relevant sector of the public;
b. duration, extent, and geographical scope of the mark's use and promotion;
c. The duration and geographical scope of any registrations or applications for registration of the mark;
d. The record of successful enforcement of rights over the mark; and
e. The value of the mark."

The scope in Article 21 is the closest we can get for defining a famous trademark in Indonesia. Unfortunately, the transition from Law Number 15 of 2001 to Law Number 20 of 2016 concerning Trademarks and Geographical Indications has not furnished a definite definition of a famous trademark. Instead, it elucidated the criteria that typify or categorize such a trademark.

C.3. Legal Protection Under Indonesian Regulation

C.3.1 Types of Legal Protection

Legal protection is fundamentally designed to protect the public from the detrimental effects of unfair competition and activities against the law. Essentially, legal protection, as both preventive and punitive in nature, represents a judicial measure provided by the State with the intent to impart justice, maintain order, safeguarding both intellectual property rights and preventing infringements by parties seeking to exploit a trademark for bad-faith purposes. The overarching goal is to ensure that the products purchased by the public are safe, reliable, and fulfill the intended purposes for which they were acquired.

In Indonesia, legal protection can be categorized into two main types: 1) Preventive Legal Protection, and 2) Repressive Legal Protection.

Preventive Legal Protection refers to the proactive measures taken by the government with the objective of preventing potential infringements and avert situations that could significantly harm registered trademark holders and their business interests. The preventive measures under the Trademark Law are contingent upon the trademark owner. Article 1(5) of the Trademark Law stipulates that the trademark right is an exclusive right granted by the state to the registered owner for a specified duration, allowing them to use the trademark or authorize others to use it. Article 35 further elaborates that a registered trademark is granted protection for an initial duration of 10 years starting from its registration date. Subsequent extensions of this protection are possible in

successive 10-year periods. For the trademark to be renewed, the proprietor must initiate the extension process at least 12 months prior to its expiry. Notably, the protection's duration will be prolonged only if the trademark continues to be actively utilized in commercial endeavors. Thus, Products that aren't registered won't be recognized or protected under the Law. The Ministry of Law and Human Rights and Directorate General of Intellectual Property Rights ["**DJKI**"] plays a pivotal role in ensuring trademark protection through providing preventive legal assistance, including seminars and facilitation for trademark registration, particularly for Micro and Small Enterprises.

Repressive Legal Protection involves punitive measures (fines, imprisonment, and penalties), which serves as the final legal recourse and remedy when infringement occurs, in accordance with the procedures and regulations stipulated by the prevailing laws. Despite being registered, oftentimes trademarks face challenges such as unauthorized use by prior users or imitation by third parties. In the event of disputes, actions can be pursued either through criminal or civil litigation.

Essentially, the legal protection accorded to registered trademarks aims to prevent unfair competition. This prevention is manifested in the form of prohibiting or restraining third parties from infringing upon a trademark by leveraging or exploiting another's mark. Also, to grant protection to owners, ensuring that their creations, imbued with economic value, can fulfill their needs effectively.

C.3.2 First to File System

Formerly, under Law Number 21 of 1961 concerning Company and Business Trademarks, it adhered to the principle of 'First to Use' or declarative system. The principle of 'First to Use' dictates that the person who initially uses a mark holds legal rights to it. Yet, within this framework, even individuals who haven't formally registered their mark receive protection, resulting in an absence of clear legal clarity. This provision was later replaced by Law Number 19 of 1992

concerning Trademarks and, which shifted and adopted the 'First to File' principle or the constitutive system. This principle is later kept until the latest amendment of the trademark law.

The use of the 'First to File' principle is an implementation of Article 3 of the 2016 Trademark Law stating that new trademark rights are granted to the first registered owner. Thus, the legitimate owner of a trademark is the one who first registers it at the Trademark Office, unless proven otherwise, such as if the registration was done in bad faith. The term "First Registrant" correlates to the registration date of the mark through DJKI. Registered trademarks are afforded protection against trademark infringements and can seek remedies through filing lawsuits for damages or criminal charges or exercising their right to request the cancellation of same trademarks registered by others without proper rights. Moreover, filing trademarks grants great legal certainty as the owner will receive registration certificate, which serves as evidence of the trademark right and is considered the first user of the mark in question.

C.4. Application of the Legal Protection for Famous Trademarks in Indonesia (Case Study of the Holder of IKEA Trademark Based on the Decision of the Supreme Court Number 264/K/PDT.Sus- HKI/2015)

C.4.1 Removal of Famous Trademarks

According to Article 61 paragraph (2)(a) of Law No. 15 of 2001 concerning Brands that have been replaced with Article 74 paragraph (1) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, the removal of Mark registration on the initiative of the Directorate General can be done if The brand has not been used for 3 consecutive years in the trade of goods and/or services from the date of registration or last use unless there is a reason that can be accepted by the Directorate General.

Based on Article 61 to Article 63 of Law Number 15 of 2001 concerning Trademarks, there are three ways to remove registered trademarks, namely:

1. Elimination of the initiative of the Directorate General HKI;
2. Removal at the request of the brand owner, and
3. Removal due to a third-party lawsuit in the form of a lawsuit to the Court.

The application for the removal of trademark registration by the owner of the brand or its Power of Attorney, either in part or all types of goods and/or services, is submitted to the Directorate General. The removal of trademark registration can also be submitted by a third party in the form of a lawsuit to the Commercial Court based on Article 63 of Law Number 15 of 2001 concerning Trademarks with the reasons referred to in Article 61 paragraph (2) letter a and letter b. The removal of Trademark Registration based on a third party lawsuit will be carried out by the Directorate General of IPR if the court's decision on that matter has been accepted and has permanent legal force. If the trademark registration removal lawsuit is accepted and has permanent legal force, the Directorate General of IPR will carry out the removal of the relevant brand from the General Register of Trademarks and announce it in the Official Brand News.

The second form of resistance is a removal lawsuit, in which the request that a registered mark be removed from the General Register Trademarks on the grounds that the owner of the brand has not used the mark for three consecutive years.

C.4.2 Application towards the IKEA Dispute

In this IKEA trademark dispute case, the removal was caused by a third party lawsuit against the Court. PT Ratania Khatulistiwa sued PT Inter IKEA System BV Sweden to the Court for considering that PT Inter IKEA System BV Sweden has been idle for 3 (three) years in a row. The Commerce Court granted the removal lawsuit. PT Inter IKEA

The Swedish BV system then appealed for cassation to the Supreme Court but on May 12, 2015 the Supreme Court of the Republic of Indonesia decided to

reject the cassation application from PT Inter IKEA System BV Sweden which at the same time meant to uphold the previous Commercial Court's decision.

After the reading of the Supreme Court's decision Number 264/K/PDT.Sus-HKI/2015 PT Inter IKEA System BV Sweden must give up the registered trademarks IDM000093006 and IDM000277901 are removed from the General Register of Indonesian Brands.

C.4.3 Analysis of Supreme Court Judge's Consideration

On September 17, 2014, the Judge of the Central Jakarta Commercial Court gave a verdict on the case of PT Ratania Khatulistiwa VS PT Inter IKEA System BV Sweden. In the decision Number 99 / PDT.Sus – Brand / 2013 / PN.Niaga.Jkt.Pst, the judge granted the plaintiff's application and abolished the "IKEA" brand owned by PT Inter IKEA System BV Sweden. Then on October 6, 2014 PT Inter IKEA System BV Sweden submitted a Cassation Application with the Cassation Application Deed Number 42Kas/Pdt.Sus-HaKI/2014/PN.Niaga.Jkt.Pst. Jo. Number 99/PDT.Sus-Brand/2013/PN.Niaga.Jkt.Pst.

In the Supreme Court Decision No. 264 K/Pdt.Sus-HKI/2015 between PT Ratania Khatulistiwa and PT Inter IKEA System BV Sweden, the judge decided to reject the cassation of the Applicant. The Supreme Court stated that *Judex Facti* by the Commercial Court at the Central Jakarta District Court was correct and did not wrongly apply the law. On the grounds that a brand that has not been used by its owner for 3 consecutive years may be removed from the General Register of Brands. In consideration of the facts, the respondent is a third party with an interest to file a removal lawsuit against the "IKEA" Trademark Registration. The Cassation Respondent has carried out industrial business activities to make and produce various kinds of home furniture products made of wood or rattan, so it is necessary to get protection for the brand from the State in this case the Ministry of Law and Human Rights R.I Directorate General of Intellectual Property Rights.

In his lawsuit, the Respondent of Cassation postulates the following things:

> *"... This is no longer in accordance with the mandate of Law Number 15 of 2001 concerning Brands and it is appropriate that the legal protection of the Defendant's "IKEA" brand ends and is deleted, the Plaintiff, on the other hand, as a national company in the field of furniture is the party who wants to use the "IKEA" brand in order to bring benefits to the national economy of Indonesia. Thus, the Plaintiff is a third party with an interest to file a lawsuit in this case."*

Regarding the intention of the Cassation Respondent, the Cassation Respondent argues that the submission of a request for registration of the "IKEA" Trademark by the Cassation Respondent is on the basis of bad faith, based on the intention of imitating and riding the reputation of the "IKEA" Trademark belonging to the Cassation Applicant. In Indonesia, to register a Brand must be based on good faith. A good-faith applicant is an applicant who registers his brand properly and honestly without any intention to ride, imitate or plagiarize the brand reputation of another party for the benefit of his business which results in harm to the other party or causes fraudulent, misleading, or misleading competition conditions. In this case, the Cassation Respondent uses the "IKEA" Brand with the intention of bringing benefits to the Indonesian national economy.

In his lawsuit, the Respondent of Cassation postulates the following things:

> *"... The plaintiff, on the other hand, as a national company in the furniture sector is the party who wants to use the "IKEA" brand in order to bring benefits to the Indonesian national economy. Thus, the Plaintiff is a third party with an interest to file a lawsuit in this case".*

Based on the argument, it is clear that the Respondent of Cassation only plans to use the "IKEA" Brand and until now The Cassation Respondent has not taken any commercial efforts related to the use of the "IKEA" Brand. In the consideration of the judge, if all people or legal entities can file a removal lawsuit only with a trademark registration application and a plan to use a brand, it is very easy for every person or legal entity to qualify themselves as an interested party, which will not create a legal certainty. Based on the market survey results, it turns out that the "IKEA" brand products registered by the Defendant for class

20 and class 21, have been proven that they have never been sold and/or have never been distributed by the Defendant, in the world of trade in goods and services in Indonesia, from the date of registration to the date of this lawsuit was registered, it clearly proves that the Defendant has not used the "IKEA" brand for three consecutive years since the date of registration.

This is in accordance with Article 61 paragraph (2) (a) of Law No. 15 of 2001 concerning Brands that have been replaced with Law No. 20 of 2016 concerning Trademarks and Geographical Indications Article 74 paragraph (1) which states that:

> *".... Removal of Trademark registration on the initiative of the Directorate General can be done if: (A). Brand is not used for 3 (three) Consecutive year in trade of Goods and/or services from the date of registration or* ***last use,*** *unless there is a reason that can be accepted by the Directorate General".*

Explanation of the Article above stipulated that what is meant by the term "Last Use" is the use of the brand in the production of goods or services that are traded. When the last use is calculated from the last date of use even after that the item in question is still circulating in the community.

Related to this, the judge has revoked the trademark rights of the Cassation Applicant which have been proven to be used in good faith in real trading activities.

Cassation applicants have submitted evidence of activities of various types of products in class 20 and class 21, namely in the form of production confirmation from local producers in Indonesia. This can indeed be used as proof that the IKEA Brand has class 20 and 21, namely in the form of production confirmation from local producers in Indonesia. This can indeed be used as proof that the IKEA Brand with class 20 and class 21 has indeed been produced in Indonesia. However, it turns out that after a survey was carried out by the Plaintiff through the Berlian Group Indonesia (BGI) market survey, it turned out that the IKEA product was not sold in Indonesia and it turned out that one of the

witness was not corroborated in front of the trial so that the statement or evidence submitted did not have the power of proof and must be ruled out.

The Cassation Applicant added evidence in the form of image documentation that proved the existence of the official Cassation Applicant's shop in Indonesia, namely on Jalan Alam Sutera, Tangerang. According to the Judge's consideration, evidence about the images of the shops could not show that the Defendant had or was marketing his products. The store does exist, but has not been able to prove that the items in Class 20 and Class 21 are sold and distributed in the market. Other things besides the evidence of the documentation submitted, the Cassation Applicant also assessed that the survey submitted by the Cassation Respondent was inaccurate and tends to be misleading. In the argument, the Plaintiff stated that until now the Defendant does not have a single shop in the territory of the Republic of Indonesia for Goods/services Classes 16, 35, 20, 11, 24, 42 and 21 or the Defendant does not have a factory, official distributor, official agent, official dealer, official retailer, or official representative to trade "IKEA" Brand goods, or the Defendant does not carry out production, trade and supply activities for goods with the Brand. The Cassation Applicant considers the proposition to be made up and only based on the assumptions resulting from a highly dubious survey. The Cassation Respondent did not conduct a survey across the city that should be eligible to be surveyed to prove the Cassation Applicant's IKEA Brand was not used. Respondent Cassion conducted a survey in Jakarta, while the IKEA store owned by the Cassation Respondent was located on Jalan Alam Sutera, Tangerang.

The survey results were assessed by The Cassation Applicant is a manipulation and is not carried out based on the correct and comprehensive method. If the Plaintiff is observant in preparing the lawsuit and has indeed taken the necessary strategic steps to file a trademark removal lawsuit, the Plaintiff should be able to clearly see the existence of the IKEA Official Store located in Alam Sutera Tangerang.

According to the judge, the inaccuracy of the survey results is not surprising because in the database of the Supreme Court's Decision, Berlian Group Indonesia as the survey institution appointed by the Cassation Respondent, has never been a reference for the Supreme Court Justices or the Commercial Court in deciding the trademark removal case. So it is not surprising that the Cassation Respondent is unable to find the sale and distribution of various "IKEA" products belonging to the Cassation Applicant for the types of goods in Class 20 and Class 21 carried out in Indonesia, even through online searches that can be done by anyone. It is also not surprising that the survey institution appointed by the Cassation Respondent, Berlian Group Indonesia, is also unable to know the use of the "IKEA" Trademark Registration by the Cassation Applicant in depth, both related to the production process carried out by the Cassation Applicant for various types of goods in Class 20 and Class 21 with the "IKEA" Brand Registration in Indonesia, as well as trade activities using the "IKEA" Trademark Registration of the Cassation Applicant carried out by the Cassation Applicant with various parties in Indonesia.

In the argument, it is stated that the Cassation Applicant is a company engaged, among others, in the field of production of household appliances and equipment and office needs originating from the State of Sweden, which sells directly to consumers or users in retail/retail on an international scale using the "IKEA" Brand and its combinations.

As a form of social responsibility, the Cassation Applicant also carries out corporate social responsibility by supporting and collaborating with the World Health Organization (WHO), the United Nations organization, namely the World Organization for Children (UNICEF) and an international non-governmental organization originating from the United Kingdom, Save The Children, which is engaged in a mission to prevent children from being employed as workers. In addition, the Cassation Applicant cooperates with international non-governmental organizations engaged in the field of

environment, WWF (World Wide Foundation) which is engaged in the mission of preventing illegal and illegal logging and sale of forest products.

In its consideration, the Supreme Court argues that the objections raised by the Cassation Applicant cannot be justified.

The Supreme Court considers that the facts has been in accordance with the provisions of Article Article 74 paragraph (1), then the mark that is not used by the owner for 3 (three) consecutive years may be removed from the General Register of Marks, it has been proven in the examination that the IKEA trademark for the class of goods/services Class 20 and Class 21 with Registration Number IDM000092006 and Registration Number IDM000277901 has not been used by the Defendant for 3 (three) consecutive years since the trademark was registered, therefore the Judex Facti decision in the case is appropriate so that it is appropriate to be maintained. However, the Supreme Court Justice member I Gusti Agung Sumanatha expressed a dissenting opinion. According to I Gusti Agung Sumanatha, the objections of cassation can be justified and the facts has been wrong in applying the law with the consideration that the Cassation Applicant/ Defendant can prove his proposition that the Defendant's "IKEA" Brand has been legally registered and is a well-known brand that must be protected and there are no reasons to be removed, in plainly the defendant's shops that sell their products are scattered and in Indonesia the official IKEA store is large enough on Jalan Alam Sutera Tangerang so that according to I Gusti Agung Sumanatha Article 61 paragraph (2) letter a of Law No. 15 of 2001 concerning the Brand cannot be applied.

Because there is a difference of opinion in the Panel of Judges and deliberation has been sought but no consensus is reached, the Panel of Judges takes the decision with the most votes.

C.4.4 Supreme Court's Decision Number 264 K/PDT.Sus-HKI/2015

Against the Cassation Application filed by PT Inter IKEA System BV Sweden on October 6, 2014, the Supreme Court has given a decision Number 264 K/PDT.Sus-HKI/2015, on May 12, 2015 which is as follows:

a. Considering, that based on the considerations mentioned above, it turns out that the Commercial Court's Decision at the Central Jakarta District Court in this case is not contrary to the law and/or the law, so the cassation application submitted by the INTER IKEA SYSTEM B.V Cassation Applicant must be rejected.
b. Considering, that because the cassation application from the Cassation Applicant is rejected, the Cassation Applicant must be punished to pay the case fee in this cassation level; Pay attention, Law Number 15 of 2001 concerning Trademarks of Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment to Law Number 3 of 2009, as well as other relevant laws and regulations.

C.4.5 Forms of Legal Protection for IKEA Trademark Rights Holders Reviewed from Supreme Court Decision Number 264 K/PDT.Sus-HKI/2015

The definition of legal protection is a protection given to the subject of law, In the form of legal devices both preventive and repressive, both written and unwritten, in other words, legal protection as a description of the function of the law, which is a concept where the law can provide justice, order, certainty, benefit and peace.

The granting of trademark rights protection is only given to the owner of the brand whose brand has been registered. Brand protection is given when there is a brand violation committed by a party who does not have rights to a brand. In the world of trade, brands have an important role, because with a well-known brand, it can affect the success of a business, especially in terms of marketing. In

the world of trade there are often violations of famous brands mainly due to parties who do not have the right to use registered trademarks for their interests

In the IKEA brand dispute between PT Ratania Khatulistiwa and PT Inter IKEA System BV Sweden, it was finally won by PT Ratania Khatulistiwa. In its ruling, the Supreme Court rejected the Cassation Request from PT Inter IKEA System BV Sweden and stated that the finding of facts was appropriate so that it was worth defending.

PT Ratania Khatulistiwa knows that PT Inter IKEA System BV since the date of registration of trademarks for class 20 and Class 21 goods/services PT Inter IKEA System BV has never sold and/or never distributed goods with the "IKEA" brand in the territory of the Republic of Indonesia in furniture stores throughout the Republic of Indonesia until the time the lawsuit was registered. PT Inter IKEA System BV also does not have a store (store/store) to sell or distribute products under the "IKEA" brand. This proves that the "IKEA" brand Registration Number IDM000277901 dated October 27, 2010 and the "IKEA" Brand with the Registration Number IDM000092006 dated October 09, 2006 was not used for 3 (three) consecutive years.

It proves that the Defendant has not used the "IKEA" brand for 3 (three) consecutive years since the date of his registration, in this case:

- Defendant did not use the "IKEA" brand Registration Number IDM000277901 class 20 for 3 (three) consecutive years in the Republic of Indonesia since October 27, 2010;
- The defendant did not use the "IKEA" brand Registration Number IDM00092006 class 21 for 3 (three) consecutive years in the territory of the Republic of Indonesia, since October 09, 2006.

In accordance with Article 74 paragraph (1) of Trademark Law, the exclusive right to brands in Indonesia is only given to brands that have been registered with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia (DJKI). The registration of the mark adheres to the first-to-file principle, where the right will be granted to the first

registrant. In addition to first-to-file, the brand protection system in Indonesia also adheres to the principle of Territoriality, that is, that the exclusive rights of the brand only applies in the territory of the State in which the mark is registered. Thus, companies whose business activities take place across countries absolutely need to register their brands in countries where their business activities are located.

PT Inter IKEA System BV is a foreign company in the field of furniture and will develop its business in Indonesia, therefore PT Inter IKEA System BV registered its brand in Indonesia in 2010 for Class 20 and in 2006 for Class 21. However, based on the survey, PT Inter IKEA is proven not to use the "IKEA" brand for 3 (three) years in a row, so that it can be judged that PT Inter IKEA System BV as a foreign company does not take advantage of the brand protection that has been given to the Republic of Indonesia to it or has wasted the brand that has registered. This is no longer in accordance with the mandate of Law Number 15 of 2001 concerning Trademarks and it is appropriate that the legal protection of the "IKEA" brand owned by PT Inter IKEA System BV ends and is removed, on the other hand as a national company in the field of furniture, PT Ratania Khatulistiwa is the party who wants to use the "ikea" brand in order to bring benefits to the national economy of Indonesia.

Article 72 and Article 74 of the 2016 Trademark Law regulates the removal of registered brand. There are minimal changes regarding the arrangement for the removal of registered marks from Law No. 15 of 2001. The removal of brands can be done on the initiative of the Director General of HKI, but in the new Trademark Law, the removal of registered marks can be done on the initiative of the Minister. Article 72 states that a registered mark can be submitted for its removal at the request of the owner of the mark concerned. The application for the removal of trademark registration by the owner of the brand or its proxies, either part or all types of goods and/or services, is submitted to the Director General of HKI. A request for brand removal by the brand owner may be submitted for some or all types of goods or services that belong to one class, the

consideration of the brand owner in this case, usually because the brand is considered no longer profitable again.

The request for removal of registered trademark registration by the brand owner must be submitted in writing in Indonesian to the Director General of IPR by mentioning the registered brand and the relevant brand registration number.

The commercial court's decision in question can only be submitted at the cassation level. The court clark concerned immediately submits the contents of the Court's decision to the Directorate General of IPR which will only carry out the removal of the relevant brand from the General Register of Trademarks if the decision of the judicial body has been accepted and has permanent legal force.

Based on the provisions of Article 63 of Law Number 15 of 2001 concerning Brands, The plaintiff as a third party can file The lawsuit for the removal of "IKEA" brand registration on behalf of the Defendant Registration Number IDM000277901 Class 20 and Registration Number IDM000092006 Class 21, based on the reasons referred to in Article 61 paragraph (2) letter a and b of Law Number 15 of 2001 concerning Trademarks in the form of a lawsuit against the Commercial Court. Article 63 of Law Number 15 of 2001 concerning Trademarks reads:

> "*The removal of Trademark registration based on the reasons referred to in Article 61 paragraph (2) letter a and letter b can also be submitted by a third party in the form of a lawsuit to the Commercial Court*".

Article 61 paragraph 2 letter (a) jo. Article 63 of Law No. 15 of 2001 concerning Marks gives the right to a third party in filing a trademark registration removal lawsuit with the Commercial Court for a brand that was not used for 3 (three) consecutive years in the trade in goods and/or services. In this case PT Ratania Khatulistiwa has the right to file a trademark registration removal lawsuit.

This article analyzes that the facts in the decision is appropriate and must be carried out. The reason is, PT Inter IKEA System BV which is a foreign company that develops its business in Indonesia already has a "IKEA" Brand

Registration Certificate, but PT Inter IKEA System BV does not take advantage of the rights granted by the Government of the Republic of Indonesia. PT Inter IKEA System BV has been idled for more than 3 (three) years. Therefore, the "IKEA" brand owned by PT Inter IKEA System BV for class 20 and class 21 must indeed be abolished.

D. Conclusion

The emergence of the IKEA brand dispute between PT Ratania Khatulistiwa and PT Inter IKEA System BV Sweden occurred because of the Application for Registration of the "IKEA" Brand for class 20 and class 21 which was received on December 20, 2013. At that time the IKEA brand already existed and was owned by PT Inter IKEA System BV Sweden which was registered in the General Register of Trademarks of the Directorate General of Intellectual Property on October 27, 2010 for class 20 and October 9, 2006 for class 21. The existence of the dispute caused PT Ratania Khatulisiwa to file a lawsuit for the removal of the IKEA brand for class 20 and 21 goods owned by PT Inter IKEA System BV Sweden because the brand was not used and was not seen in the market within 3 consecutive years so that it is based on Article 61 paragraph (2) of Law Number 15 of 2001 concerning Trademarks that have been replaced with Law No. 20 of 2016 concerning Marks and Geographical Indications Article 74 paragraph (1), if the Mark is not used for 3 (three) consecutive years in the trade of goods.

The last use of the Brand can be removed at the initiative of the Directorate General of HAKI. The IKEA brand owned by PT Inter IKEA System BV Sweden was declared to have been deleted after the Supreme Court of the Republic of Indonesia issued Decision Number 264/K/PDT.Sus-HKI/2015. Legal protection for IKEA trademark rights holders is reviewed from the Supreme Court's Decision Number 264/K/PDT.SUS-HKI/2015 can be seen from the first basic principle of the provisions of Law Number 15 of 2001 concerning Trademarks which has currently been replaced with Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which is, the exclusive right of a mark is only granted to brands that have been

registered with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. The registration of the mark adheres to the first-to-file principle, where the right will be granted to the first registrant. If there is a trademark that has been registered but is not actually used by the trademark right holder, it can be proposed for removal of the mark as stipulated in Article 61 paragraph (2) of Law Number 15 of 2001 concerning Marks that have been replaced with Law No. 20 of 2016 concerning Trademarks and Geographical Indications Article 74 paragraph (1), provided that the mark is not used for 3 consecutive years. PT Ratania Khatulistiwa obtains legal protection from legal actions and/or services from the date of registration or registration of the IKEA brand registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia, as well as under the law of PT Ratania Khatulisiwa may be a third party that is allowed to apply for the removal of the IKEA mark that is not used by PT Inter IKEA System BV Sweden, even though PT Ratania Khatulisiwa is not the first registrar of the IKEA brand.

Based on the description above, the author provides input and suggestions to several parties, including:

1. For business actors who require a brand as a trade product that is sold and bought, it is better to immediately register the brand that has been owned so that the brand has legal force and exclusive rights.
2. For the Government, especially the Directorate General of Intellectual Property, it is very necessary to socialize the importance of brand registration in the competition of entrepreneurs in Indonesia. Until now, the public's awareness, especially the lower middle-class entrepreneurs, still does not believe in the importance of trademark registration for a product they have. As a result, many small businesses that come from household activities, it turns out that their products are imitated and distributed by other parties who take advantage of the success of the first brand owners.

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